

CAUSE NO. D-1-GN-18-001605

MARCEL FONTAINE,
Plaintiff

§
§
§
§
§
§
§
§
§

IN DISTRICT COURT OF

VS.

TRAVIS COUNTY, TEXAS

ALEX E. JONES, INFOWARS, LLC,
FREE SPEECH SYSTEMS, LLC, and
KIT DANIELS,
Defendants

459th DISTRICT COURT

PLAINTIFF’S SPECIAL EXCEPTIONS TO DEFENDANTS’ ORIGINAL ANSWER

Comes now, Plaintiff Marcel Fontaine, and files these Special Exceptions to Defendants’ Original Answer, and would show the Court as follows:

I.

The purpose of Special Exceptions is to force clarification of an adverse party’s pleadings when they are not clear or sufficiently specific. *Connolly v. Gasmire*, 257 S.W.3d 831, 839 (Tex. App.—Dallas 2008, no pet.). Special exceptions may also be used to determine whether a party has stated a claim or defense permitted by law. *Mowbray v. Avery*, 76 S.W.3d 663, 677 (Tex. App.—Corpus Christi 2002, pet. denied) (citing TEX. R. CIV. P. 91).

II.

Plaintiff specially excepts to Paragraph No. 2 because Defendants’ pleading is vague and does not give fair notice of its defense. Defendants asserted the defense of an “accurate reporting of allegations made by a third party regarding a matter of public concern.” Defendants failed to identify any third party, and Defendants also failed to identify where and when these alleged third-party statements were made, or the content of the statements which Defendants claim to have reported accurately. Defendants should be required to replead with specific facts.

III.

Plaintiff specially excepts to paragraph No. 2 because Defendants' pleading is vague and does not give fair notice of its defense. Defendants claimed that "Plaintiff failed to mitigate his damages." A failure to mitigate damages means that a plaintiff unreasonably failed to take some action which would have lessened his harm. Yet Defendants do not identify any omission by Plaintiff which could support a failure to mitigate. Defendants should be required to replead, stating any alleged unreasonable omissions by Plaintiff.

IV.

Plaintiff specially excepts to paragraph No. 4 because Defendants' pleading does not state a legally recognized defense. Defendants asserted contributory negligence, claiming that Plaintiff's own acts caused his injury. Specifically, Defendants claim that "Plaintiff's filing of this suit has created or contributed to his alleged harm." Such a defense is not legally recognized for obvious reasons. A defendant's conduct is the but-for cause of a plaintiff's lawsuit, and therefore the act of filing suit to address a defendant's conduct cannot form the basis of contributory negligence in defamation. A defendant is legally responsible for all damages which are reasonably foreseeable due to defamation, including the increased publicity caused by a lawsuit. Defendants should be required to replead, omitting this spurious defense and identifying any remaining factual basis to assert contributory negligence.

V.

Plaintiff also specially excepts to paragraph No. 4 because Defendants' pleading is vague does not give fair notice of its defense. Defendants claim that Plaintiff's damages were caused by the "acts or omissions of third-parties." Yet Defendants did not identify any third-parties, nor did Defendants identify any acts or omissions committed by any third-party. Defendants should be

required to replead, identifying any third-parties and describing the acts or omissions which they alleged caused Plaintiff's damages.

CONCLUSION

Plaintiff asks the Court to set his Special Exceptions for hearing, and after such hearing order Defendants to replead and cure the pleading defects, and, if Defendants do not cure the defects, strike the defective portions of Defendants' pleading.

Respectfully submitted,

**KASTER LYNCH
FARRAR & BALL, LLP**



MARK D. BANKSTON
State Bar No. 24071066
1010 Lamar, Suite 1600
Houston, Texas 77002
713.221.8300 Telephone
713.221.8301 Fax
E-mail: mark@fbtrial.com

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2018 the forgoing document was served upon the following in accordance to Rule 21 of the Texas Rules of Civil Procedure:

Via E-File

Mr. Eric Taube
Waller Lansden Dortch & Davis, LLP
100 Congress Avenue, Ste. 1800
Austin, Texas 78701



MARK D. BANKSTON